

# DECISION



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THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-210400

DATE: January 24, 1983

MATTER OF: Bioqual, Inc.

## DIGEST:

Protester's contention that it was unfairly denied an equal opportunity to compete against the incumbent because the agency rejected its request, made before best and final offers were due, to visit Government facilities which were then occupied by the incumbent contractor and which were specified as the location for performance of the contract, is untimely. The protester did not file its protest within 10 working days after best and final offers were submitted, which is the latest date the protester should have known it had to compete without the requested visit and thus the date the basis for protest arose.

Bioqual, Inc. protests the award of Contract No. ADM 281-83-0002, by the Alcohol, Drug Abuse and Mental Health Administration of the Department of Health and Human Services (HHS). Bioqual claims that it was unfairly denied access to the Government facilities which were specified for performance of the contract and which were then in use by the incumbent contractor, who was subsequently awarded the contract. We dismiss the protest as untimely.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1982), require that a protest against other than an apparent solicitation impropriety be received by either the contracting agency or our Office within 10 working days after the basis for protest is known or should have been known.

In its protest, Bioqual indicates that it requested permission to see the facilities prior to the initial submission of proposals, and again, before submission of best and final offers. Thus, Bioqual was on notice by

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the closing date for best and final offers--November 10, 1982--that it had to compete without inspecting the facilities. See Tymshare, Inc., B-205996, January 22, 1982, 82-1 CPD 50. Bioqual's protest was filed in our Office on January 7, 1983. Since the protest was not filed within 10 working days after November 10, 1982, the protest is untimely.

Even if we interpret Bioqual's last contact with HHS as a timely-filed protest with the procuring agency, the subsequent protest to our Office was nevertheless untimely filed. Our Bid Protest Procedures require that where a protest has been filed initially with the procuring agency, any subsequent protest to our Office must be filed within 10 working days after the protester receives notice of the procuring agency's initial adverse action on the protest at that level. 4 C.F.R. § 21.2(a). See Art's Supplies & Services, B-206885, May 3, 1982, 82-1 CPD 413. Bioqual had knowledge of HHS's rejection of its request, which would constitute the agency's initial adverse action, at least by November 10, 1982, when the agency accepted final proposals without permitting Bioqual to inspect the facilities. Therefore, the protest filed with our Office on January 7, 1983, is clearly untimely on this basis also.

The protest is dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel